

Award No. 800
Docket No. 763
2-D&RGW-MA-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That Machinists E. R. Wright, M. R. Bissegger and Machinist Helpers Nick Valone, William Lampier be compensated at the rate of time and one-half for having been required to perform service on Engine W. P. 311 on Sunday, June 22, 1941, in accordance with the provisions of Rule 6, agreement dated September 1, 1940.

EMPLOYES' STATEMENT OF FACTS: Engine W. P. 311 entered the roundhouse at Salt Lake City, Utah, on June 10, 1941, with a serious crack developing in the boiler shell between the pump bracket studs, and in view of the time that was required to make such repairs, this engine was placed on the drop-pit to undergo certain other repairs.

The main driving wheels were removed in order to eliminate excessive pound in the main driving boxes which necessitated sending these main boxes to the back shop forces in order to re-bore the crown brasses.

On Sunday morning, June 22, 1941, which was then 12 days after this engine first entered the roundhouse, Machinists E. R. Wright and M. R. Bissegger and Machinist Helpers Nick Valone and William Lampier, who are regularly assigned to running repair service, were instructed by their foreman to report on the drop-pit and put up the main driving wheels, shoes and wedges, binders, brake rigging, side and main rods, bushings, knuckle pins, wrist pins, etc., as indicated by Employees' Exhibits (a), (b), (c), and (d).

The work on this engine was not completed until late the following day at which time this engine was then spot-tested, carded-out and again placed in service at 9:00 P. M. the night of June 23, 1941.

POSITION OF EMPLOYES: The Employees contend that the policy of paying time and one-half is approved in Rule 6:

"(b) Work performed on Sundays and the following legal holidays, namely, New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or Proclamation shall be considered the holiday), shall be paid for at the rate of time and one-half. . . ."

Rule 6 expressly provides an exception. . . . "running repair and inspection forces, who are regularly assigned by bulletin to work on Sundays and holidays, will be compensated on the same basis as on week days . . ." It

the carrier has the right, under certain conditions, to use on Sunday where dead work forces are maintained and such forces are maintained at Salt Lake, machinists assigned to running repairs on work that is not essential to the continuous operation of the railroad.

The carrier has and does require—at three main shop points, Salt Lake, Burnham (Denver) and Grand Junction—seven day running repair forces to drop or put up main wheels on locomotives when necessary, and this is the first protest of record that has been made.

The carrier requires no more men to work on Sundays and holidays than is absolutely necessary, and asserts that the work performed by the employees in this instance was running repair work, performed by regularly assigned seven-day running repair forces, and was essential to the continuous operation of the railroad.

The carrier contends there was no violation of Rule 6 (b) in this instance and further contends the intent of Rule 6 of the National Agreement (which is similar to Rule 6 (b) of the current agreement), as expressed by the United States Labor Board in its Decision 222 which reads:

“The policy of paying time and one-half for work performed on Sundays and holidays is also approved in Rule 6, but an important exception is provided. Certain kinds of work, which are unavoidably and regularly performed on Sundays and holidays and which are absolutely essential to the continuous operation of the railroad to meet the requirements of the public, are not treated as overtime work. The carrier has no choice as to the performance of this work and does not arbitrarily require it. It is not just to penalize the carrier for that which it cannot escape. Manufacturing plants can, as a rule, control or eliminate Sunday and holiday work; therefore, a comparison of such plants with a railroad is unfair except insofar as the ‘back shop’ is concerned, and the method of paying for overtime in the back shop has not been disturbed by these rules.”

has particular application to the work performed by the employees involved in this dispute and respectfully requests that the Board deny the claim.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

Rule 6 (b) reads in part as follows:

“* * * Sunday and holiday work will be required only when essential to the continuous operation of the railroad.”

The work performed on Engine W. P. 311 Sunday, June 22, 1941, by Messrs. Wright, Bissegger, Valone and Lampier was not essential to the continuous operation of the railroad.

AWARD

Claim of employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1942.